ARGUMENT

OF

E. C. LARNED, ESQ.,

Counsel for the Defence,

ON THE

TRIAL OF JOSEPH STOUT,

INDICTED FOR RESCUING A FUGITIVE SLAVE FROM THE UNITED STATES DEPUTY MARSHAL, AT OTTAWA, ILL., OCT. 20, 1859;

DELIVERED IN THE

UNITED STATES DISTRICT COURT,

IN THE NORTHERN DISTRICT OF ILLINOIS,

MONDAY & TUESDAY, MARCH 12 & 13, 1860.

R. R. HITT, Reporter.

CHICAGO:

PRESS & TRIBUNE BOOK AND JOB PRINTING OFFICE, 51 CLARK STREET.

1860.

ARGUMENT

OF

E. C. LARNED, ESQ.,

COUNSEL FOR THE DEFENSE,

ON THE TRIAL OF JOSEPH STOUT, INDICTED FOR RESCUING A FUGITIVE SLAVE FROM THE U. S. DEPUTY MARSHAL, AT OTTAWA, ILL., OCT. 20, 1859,

---

DELIVERED IN THE UNITED STATES DISTRICT COURT, FOR THE NORTHERN DISTRICT OF ILLINOIS, MONDAY AND TUESDAY, MARCH 12 & 13, 1860.

Mr. LARNED said:

Gentlemen of the Jury:—It was a fitting exordium to such a prosecution as this, for the Attorney of the United States to attack the Declaration of Independence, and seek to explain away and destroy the full meaning and effect of those principles which lie at the foundation of that liberty which is the most precious birthright of every American citizen.

Nor was it unnatural, gentlemen, that at the same time he should seek to enlist in support of his case those principles of natural justice and right to which, as the highest in our nature, men are ever guided in forming their judgment of human action. For it is not a pleasing duty for any man to ask a jury to convict a man as a criminal for an act which has no guilt, save that which is found on the pages of the statute book.

It was not strange, gentlemen, that he should bring before you the names of Webster and Clay, of Washington and of Jefferson, and seek to borrow from the reflected lustre of these great and illustrious men, something to lighten the character and take from the odium of this prosecution. But yet, gentlemen, it is in vain for him to travel out of the record to gain any support for the cause which he advocates.

Only in the letter of the statute—only by the force of the enactments of a law made by men, and binding upon courts and juries, and not by the force of any considerations of what is just and right under the higher and everlasting laws which are written by God in the conscience and moral nature of man, can he find any sanction for a verdict against the defendant at the bar.

Gentlemen, in the nineteenth century of the Christian era, in the Republic of the United States, in the free State of Illinois, a man of unblemished character—a man known and beloved in a city which his intelligent industry has aided to build up, and his high moral qualities have contributed to adorn—sits at the felon's bar of this Court, and is on trial as a criminal.

And the offense—the *crime* alleged against him, and for which he is thus arraigned—is that he has aided a fellowman in his effort to obtain his liberty. It is charged to be a crime in that Republic whose foundations were laid in those great principles of liberty, equality, and the rights of man, of which the Declaration of American Independence is the fullest and noblest national expression, to aid a fellowman in seeking to secure for himself that blessed boon of liberty to which every human being is by virtue of his manhood entitled.

Regarded outside of and independent of the statute book —viewed by the light of those principles of conscience, that higher law of universal right and justice, which, however it may be scoffed at and despised, every true man reverences as far above all mere human enactments—the act which is charged against the defendant would be approved as a virtue, not condemned as a crime.

For surely to extend a helping hand to the oppressed, to aid the friendless and despised outcasts of human society, to give the word of sympathy and the hand of kindness to the forsaken, forlorn, friendless slave on his way to liberty, would be an act of humanity and of Christian charity which would bespeak a generous and noble nature, and

commend itself to the best and holiest instincts of the human heart.

But it is said by the Attorney for the Government that this man was a *slave*, and therefore had no right to his liberty, and that the acts of those who aided him to secure it were no better than highway robbery, and he has summoned to his aid in this argument the compromises of the Constitution, the compacts of the ordinance of 1787, and the laws of the Federal Government enacted (as he claims) for the fulfilment of these compromises and compacts.

Gentlemen, did the idea occur to you when the learned gentleman was discoursing upon those compromises and compacts, in behalf of which he sought to awaken your patriotism and love of the Union, that the slave is no party to your constitutions or your compacts, that he has never given his assent to your ordinances or your legislation?

Did it occur to you, when the learned counsellor was discoursing upon the sacredness and antiquity of the great right of property, and invoking your sense of justice and right against the violation of this right, that there was a right older and more sacred than the right of a master to a slave—*the right of the slave to himself?*

The right of a master to a slave is the right of power. It is the right of the strong over the weak. It is *might*, not *right*.

The right of a man to himself is by a deed of gift from the great God who created him, and of which no human power or authority can rightfully deprive him.

It is written by the hand of the Almighty on the brow of every human being whom he has formed in his own image, into whom he has breathed an immortal soul, and who, by virtue of these divine prerogatives, has become *a man*.

There is no right of property as ancient as this, for it dates back to the first moment of creation. There is none so sacred, for it is conferred by Him who is the Maker of all things, and to whom all belong.

It is said that the negro is a degraded being, that he belongs to an inferior race; and his physical and mental inferiority have been the subject here of ridicule and contempt. Grant that it is so—grant that he is weak, abject, miserable—that he is wanting in every quality to excite your admiration, or enlist your interest or sympathy. In what code of ethics—in what system of philosophy—in what form of religion, does the learned gentleman find

that weakness, ignorance and destitution furnish an excuse for oppression and injustice? If a man is deserted, forsaken, without home, fortune or friends, weak and miserable, having no power to defend himself and nothing to reward the defense of others—does not this very weakness become, in every noble nature, the most eloquent appeal against injustice and outrage?

I care not how degraded the African race may have become through the long centuries of dark and cruel bondage in which this unhappy people have been made the victims of oppression. I ask of the learned gentleman who has sought so eagerly to excite the bitterest prejudices of caste and race against them, and to picture them before you in so debased and degraded an aspect as to turn away your sympathy and deaden your sensibilities toward them; I ask the gentleman to answer me but one solitary proposition: Is the negro a *man?* If he is not a man—if he is a mere animal like a horse or an ox—if no human heart beats in his bosom—if he has no fears or hopes or affections—if he has no feeling of love or hate—no conscience to be touched with the sense of right and wrong—then the gentleman is right and I am wrong in my reasoning.

But, if he be a man—if he has a human nature—if he was created by the same divine hand and after the same divine image in which you and I were formed, then I read, in that Book of books from which I have learned the lessons of duty and the principles of my moral life, that God made of one blood all nations that dwell upon the face of the whole earth—that we are all the children of one Father, and that all men are brethren. Are we not all sharers of one common humanity? Are we not all to be redeemed by the same infinite Saviour, and heirs of the same glorious immortality? If so, then is every man, be his skin white or black, whatever his country, his birthplace or his condition, my *brother*,—brother not in equality of condition or capacity, but a brother in the great human family of God; and by virtue of his manhood, in the right of that divine humanity which is before all law and above all law, do I declare that he has the right to himself—that this right to himself is the highest of all rights, of which no constitutions, no compacts, no compromises, no legislation, can rightfully deprive him. There is, there can be in the nature of things, no right which can be superior to the right of a man himself.

I maintain, then, that when a man held as a slave, strikes

out for freedom, when he has the courage and the manliness to vindicate for himself the great right of his humanity, that he is committing no wrong upon his master, no wrong upon any one; for his right to himself as far transcends that of his master to him, as the laws of God transcend the laws of man. He has the right to his freedom, if he can obtain it without violence and blood, without destroying the lives or liberties of others. He has the right to flee from bondage and turn his steps to a land of liberty. Nay, not only has he the right, but if he be not the brutal, degraded being which he has been pictured here; if he have within him the first faint conception of what it is to be a slave, and what it is to be free, he will do it; he will never surrender himself to lifelong slavery without a struggle to escape.

And in that struggle for liberty he will have the sympathy of every man who has a heart to feel. Why, the whole history of man through all ages is a history of struggles for liberty; a history written in tears and blood; a history out of which have risen the heroes of our race. And do those records of heroism and self-sacrifice in the cause of liberty which have enlisted our admiration and shed such glory over the history of man, depend for their power to move us upon the question whether the actors in these great struggles had a skin whiter or darker than our own? Is there nothing to move our sympathies, to thrill us with intensest interest, to kindle our admiration in the narrative of the struggles, and hardships, and sacrifices endured by these poor, despised, hunted outcasts, in their flight from slavery to liberty?

I tell you, gentlemen, much as we plume ourselves upon the superiority of the white race, and flippantly as we talk of the inferiority of the colored race in America, that if the secret history of the age we now live in could be truly written, that some of its grandest heroism, some of its noblest examples of devotion, fidelity, fortitude and self-sacrifice, would be found in the narratives of men belonging to that oppressed people, who have wrought out for themselves, by their own fearless courage and unyielding resolution, a deliverance out of slavery into the life and light of liberty.

Have you read any of those narratives? If not, you know not the strength and intensity of the longing of the human heart for liberty. You know not what a man will do and dare to secure it. Why, there is no form of human

suffering which these men have not braved for its sake. They have encountered the wild beasts of the forest; they have wandered weeks and months alone in desert places, hiding in dens and caves, famished with hunger, their pathway tracked with their blood. They have lain in the holds of ships, without food or drink, for days, in darkness and solitude, with scarce air to breathe; they have clung to the rudder-chains of ships, and sat through the weary days and dark nights, with the waves beating over them, clinging for life and liberty — preferring death to slavery. Romance can depict nothing of the heroic in human courage, or of the terrible in human suffering, which the reality of these narratives does not transcend.

Tell me that the best and warmest impulses of good men are not moved towards these struggling heroes of a down-trodden race! Tell me that the charity and love which stretch out the hand of sympathy to the needy and suffering has its source in the color of a man's skin! No, gentlemen; you may pass laws — you may impose penalties—you may fine and imprison and hang men, if you please; but until you blot out of the human heart everything that is generous, kind and noble, you can never make men feel that it is a crime to give a hand of kindness and a word of encouragement to the poor hunted victim of slavery on his way to liberty.

Why, we are told that the escape of the slave is a robbery of the master, and that we put ourselves on a level with thieves and plunderers in aiding him in his flight. The robber takes the property which belongs to another, and appropriates it to his own profit. If the slave has a right to himself which he has never surrendered, it is clearly no wrong in *him* to flee from slavery to liberty; and if not, then to aid, comfort and assist one who is doing right, can by no sophistry of evil be proven to be wrong.

Why, it is only within the present century that the Dey of Algiers held numbers of white men as slaves. These men were the lawful spoils of war—they were his slaves by the same law of force by which the African race is held in bondage to-day in America. You have read of some of the heroic attempts of some of those white captives to slavery to escape from bondage. You have been thrilled with admiration at their daring, and touched with sympathy by the story of their sufferings. You remember the efforts which were made by brave and noble men to aid them to escape. Did it ever occur to you as you lin-

gered with intensest interest over the narrative of the escape of these men, that they, and those who aided them, were committing highway robbery on the Dey of Algiers?

Does the fact that the color of these men's skins was whiter than that of those held in bondage in America alter the principle? Do questions of morals, the laws of conscience and of right, change according to the changing hues of the human complexion? If so, how would the argument stand if the proposition were carried into effect, which has been repeatedly discussed in several of the Southern States, of turning the entire poor white population into slaves?

I know, gentlemen of the jury, that it is the fashion of the day, and especially with those who represent the Government of the United States, to sneer at liberty, to ridicule those great rights of man which have been won from tyranny by the struggles of brave and true men through the centuries of the past, and especially to cast the most contemptuous obloquy upon those who contend earnestly for the freedom, humanity and just rights of men whose skin is darker than our own.

But I have learned from the study of history, the lesson, that the first step to the loss of a people's liberties is to cease to prize them, and that the first effort of those who desire to steal away a people's rights, is to infuse into the popular mind an indifference to all questions of right and freedom; to bring over it that cold and hard selfishness which regards nothing as important which does not affect the special personal comfort and welfare of the individual; to class as enthusiasts and fanatics all men who have faith in principle, in duty, in religion; all men who believe that liberty, humanity, the rights of man, are great realities and not unmeaning words. But, gentlemen, I care not for the ridicule or the reproach of men like these. Call me by what name they please—fanatic, enthusiast, or that other word which seems to them to comprehend the sum total of human depravity, abolitionist—I will, whenever and wherever the occasion offers, stand up and vindicate the great rights of humanity, the right of a man to himself, the "inalienable right" of every man created in the image of God, with which he was "endowed by his Creator," and which is as indestructible as that nature itself, to "life, liberty and the pursuit of happiness."

I maintain, therefore, gentlemen, that the act charged here as a crime, for which this defendant is arraigned before

you, would, (independent of any statute prohibition,) approve itself to every true man as humane, generous and worthy of all commendation.

But I am well aware, gentlemen, that it is not your privilege in this place, and before this tribunal, to judge this man's action by those higher laws of conscience which alone give to human conduct its true character.

This defendant is indicted here for a violation of a statute of the United States, the Fugitive Slave Act, and in this presence the statute book is the supreme law for all of us.

That act, odious and offensive as it is in the estimation of many good men, is the law for this Court and for this case. It has been pronounced to be constitutional by that tribunal whose decision is obligatory upon this Court, and although were it a new question or open for discussion, I think it would not be difficult to suggest strong reasons to the contrary, yet such a discussion would be out of place, and to no purpose, at this time; and I concede, therefore, at the outset, the validity of this statute, and its binding obligation upon all citizens.

But while I have no right in this presence to question the constitutionality or binding obligation of this law, I have the right, and it is my duty, to call your attention to those provisions of this law which make it dangerous to the liberties of freemen; for it is upon the existence of these very dangers that I shall base a material portion of the defence in this case. I shall demonstrate to your entire satisfaction, before I close, that it is to the exercise of those undoubted rights, and to the discharge of those unquestionable duties, which the dangers I have referred to impose upon every citizen, that the great part of all the acts committed by this defendant, which appear in evidence in this cause, is justly to be referred.

The Fugitive Slave law of 1850 is based upon, and purports to be, a carrying into execution of the 2d section of the 4th article of the Constitution of the United States, which is as follows:

"3. No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due."

It was asserted by the learned attorney for the United States that this article formed one of the compromises of the Constitution, without which it never could have been

adopted, and this remark was made the basis of some very eloquent appeals to your patriotism and love of the Union. I am well aware that this remark has been made before, and is supported by the dicta of several learned judges, but it has been made in a general way, and in connection with the whole subject of slavery in its relations to the Constitution, and it is so untrue to the recorded facts of history, about which there can be no dispute, that I think it proper to give a few moments to its consideration. I deny that this provision in this article for the right of reclamation of slaves throughout the States ever was one of the compromises of the Constitution, or that it constituted any subject of contention or difference in the Convention that framed that instrument. On the contrary, the article in question was adopted unanimously, and without eliciting any debate or dissenting opinion in regard to it.

The great subjects of difference which divided the Convention, and which resulted in what are so often called the compromises of the Constitution, were three:

1st. The question of difference between the power of the large and small States in the Federal Government, which was compromised by giving to the small States an equality in one branch of the Legislature, while the large States were represented in the other according to their population.

2d. The demand of the States where slaves formed a large element in the population, to have the population on which the representation was to be based include the slaves, which was resisted by the other States as anti-Republican and unequal, and was compromised by yielding to the slave States the right to include three-fifths of the slaves in estimating the number of the population on which the representation should be based.

3d. The third was the foreign slave trade, which was repugnant to the conscience and sense of right of many of the delegates, but was warmly insisted upon by several of the Southern States.

This was compromised by agreeing upon a specific year, the year 1808, before which time no authority to restrict the slave trade should be exercised, but giving the power to restrict it subsequently.

These were the Compromises of the Constitution. The subject of the surrender of fugitive slaves was not a matter which even excited the attention of the Convention until nearly the close of their labors.

The Convention commenced its labors in the latter part of May, 1787, and concluded them early in September of the same year.

In all of the seven different drafts of a plan of a Constitution, several of which were submitted by Southern men—one by Mr. Pinckney, of South Carolina, and one by Edmund Randolph, of Virginia—there was no provision whatever in regard to the surrender of fugitive slaves.

On the 6th of August, 1787, the Committee reported the finished draft of the Constitution, which contained no provision on the subject. It was not until the 28th day of August, a short time before the close of the Convention, that Mr. Butler and Mr. Pinckney, of South Carolina, moved as an amendment to the article respecting fugitives from justice, to require fugitive slaves to be delivered up like criminals.

Mr. Wilson, of Pennsylvania, objected to this on the ground that it would oblige the Executive of the State to do it at the public expense, and Mr. Sherman, of Connecticut, upon the ground "*that there was no more propriety in the public seizing and surrendering a slave or servant than a horse.*"

Mr. Butler then withdrew his proposition for the purpose of preparing a special article that should be free from objection. (See Madison papers, p. 1447–1448.)

On the 29th of August the Article, as it now stands, was offered by Mr. Butler and adopted without objection.

The whole idea that it was any matter of difference or dispute, or was the subject of any compromise, or formed any barrier to the formation of the Constitution, is utterly at variance with this plain and undeniable statement of facts.

Now, I have never and will never deny the obligation of any provision of the Constitution of the United States. But what is the obvious meaning and intention of the clause in question? What is the compact into which our fathers entered and by which we are bound? It was this; that the right of property in slaves should not be destroyed by the legislation of the States, nor lost by the escape of the slave into States where slavery was not recognized as lawful.

At the time of the adoption of the Constitution, the Somerset case had been decided in England, and it had become one of the settled, established principles of the common law of that country, as expounded by its highest Courts, that

slavery had no foundation in the law of nature or the law of nations—that it was dependent wholly for its existence upon local, municipal regulations, having no force outside of the territorial limits of the jurisdiction where they were established. Now, if this clause had not been inserted, what would have been the result? Why, the moment a slave entered into a free State, he would have become a free man. But to prevent such a result as this, it was provided by this article of the compact that the right in slave property should not thus be destroyed. It was permitted to the slaveholder to set up and establish, in the free States, his right of property in escaped slaves and obtain their reclamation under the law—a right which, without this express provision, he could never have enjoyed.

That right was secured to him by the Constitution; but was it ever intended to give to the owner of slave property rights and privileges in the establishment of title to, and obtaining possession of, such property under the law, which was not given with reference to any other species of property? Did they mean in behalf of this property in man, which was regarded as so contrary to all natural law—so opposed to the conscience and moral sense of mankind, that the great men who framed the Constitution refused to allow the word "slave" to appear in that instrument, which they regarded as a great charter of liberty—to overthrow all the long established modes of procedure, the laws of evidence and modes of trial which the common law of the country had for ages provided for testing questions of personal right and conflicting claims of property?

Now, why is this fugitive slave law so objectionable in the estimation of a very large portion of the best and most intelligent of our citizens? Is it because they are unwilling to carry out in good faith this compact of the Constitution? Not at all. They are opposed to slavery, but they regard it as an institution which is practically beyond their control, and they feel the obligation of the Constitution as imperative.

No, gentlemen, it is because they regard the provisions of this law as most dangerous to the rights of freemen. It is because this law violates all those great safeguards for the security of personal liberty, which they regard as no less sacred and important than the Constitution itself.

It is because this law permits a subordinate, inferior class of magistrates, whose only right to act at all is based upon the shallow pretence that they do not act as judges, to give

a judgment which decides finally and forever the great question of a man's liberty.

It is because that highest of all human rights—the right of a man to himself—is allowed to be taken away, and a man living in a free State, and presumed to be free, to be made a slave—upon *ex-parte* evidence—given in a summary way without even the sanction of a court or judicial officer.

It is because the right of trial by jury, that greatest of all the securities of life, liberty, and property of the citizen, is denied under this law.

Is not this a most just cause of dissatisfaction with this law?

If a Southern man claims a bale of cotton found in the State of Illinois to be his, and his claim is contested, can he take and carry it away? How, alone, can he obtain the right to the possession of the disputed property? Only by the judgment of twelve men—sworn as you have been sworn to determine the conflicting claims of the parties according to the laws of the land and the sworn testimony in the case, given under all the forms and sanctions of a court of law.

Now, is not the question of a man's freedom of more value than a bale of cotton?

Is the greatest of all human rights to be passed upon, without judge or jury, by an inferior magistrate who could not lawfully decide upon the right of property in a dog or an ox?

It is this great outrage upon what is regarded as the most important of all the securities for the liberty of the citizen, which constitutes the principal objection to its enforcement. Out of this defect springs most of the excitement which is aroused whenever and wherever it is sought to be executed throughout the free States, and which will continue to exist until these objectionable features of the law are removed.

It is from this cause that such prosecutions as these in which we are now engaged, arise.

My word for it, gentlemen, if this law gave a right to have the question of a man's freedom tried before a jury of twelve men, under all the solemn sanctions of a court of justice, determined by legal and competent evidence, given openly and with that right of cross-examination of witnesses so essential to the discovery of truth and the exposing of falsehood and fraud, and the fact that the man was a slave

were established by the verdict of the jury—my word for it, that a certificate under the broad seal of this high tribunal, setting forth such judgment, would enable the claimant to go from one end of this State—aye, of this whole country—to the other without interruption or molestation.

Why was not such a provision inserted in this act? Is it not demanded by every principle of justice and right? Is there any possible ground of reason on which it can be maintained that a freeman of a free State should be deprived forever of his liberty, without "the judgment of a jury of his peers, according to the law of the land?"

The learned counsel for the Government have invoked, in behalf of this law, the great name of Daniel Webster. They have eulogized him as the intellectual giant of the age—the most illustrious expounder of the Constitution. I summon that distinguished name in support of the objection which I am urging against this law.

Mr. Webster himself prepared a Fugitive Slave Law, such as, in his view, it was proper for Congress to pass to carry out this clause of the Constitution in a lawful and proper manner. He rose in his place in the Senate, on the 3d of June, 1850, and stated "that the subject of preparing a bill respecting the reclaiming of fugitive slaves had engaged his attention at an early period of the session; that in pursuance of this purpose he had conferred with some of the most eminent members of the profession, and especially with a high judicial authority who had more to do with questions of this kind than any other judge in the United States."

This bill, thus prepared by that great statesman himself, contained a proviso, giving a right of trial by jury to determine the question of freedom or slavery.

Under the act framed by Mr. Webster, there would have been no difficulty and no excitement. It would have commended itself to the calm judgment and good sense of the country, and could have been executed without serious interference.

I am not unmindful of the fact which will be urged in reply, that Mr. Webster did, at a subsequent period, give his countenance to the law we are now considering; but it is clear that the law which he prepared himself, giving a jury trial, had the approval of his best and most deliberate judgment, and although he yielded his support to this law of 1850, yet it was at a time when the weak ambition of place and power had taken possession of his nature.

He had forgotten that noblest saying of a noble man—"I had rather be right than be President."

It is the danger of men in public life to be dazzled by the tempting prizes of worldly honor. They forget that offices and honors are but for a day, and that a true and enduring fame can only rest upon services to the great rights and interests of humanity. They forget that while the names of men who sat in the high places of power in England, and enacted unjust and oppressive laws, and of the judges who became the willing instruments of their execution, have been forgotten, or remembered only to be execrated; that the names of Hampden and Sidney, men who were punished as criminals for resistance to such laws, have been enshrined for centuries in the grateful remembrance of mankind, and will be as shining lights forever in the pathway of human history.

But, gentlemen, not only does this law deprive the citizen of the benefit of a trial by jury to pass upon the great question of his right to liberty—not only does it allow inferior officers, not claimed to have any judicial character, upon *ex-parte* evidence and affidavits, and after a hearing required to be of a *summary* character, to condemn a man found in a free State to be a slave for life—but there is a further provision of the law which ties up and controls the action of these Commissioners themselves, in a manner so opposed to every principle of justice—so liable to be made the means of the grossest fraud and villainy—that it seems almost beyond belief that such a provision could have been enacted by the representatives of a free people.

The 10th section of this law authorizes an *ex-parte* record to be made up in the court of a slave State, in the absence of the party to be affected by it, and this record thus made up is, by that section, made *absolutely conclusive* of the fact of the man described in it being a slave.

That I may not mistake or overstate about this matter, I will read you the section itself:

"*And be it further enacted*, That when any person held to service or labor in any State or Territory, or in the District of Columbia, shall escape therefrom, the party to whom such service or labor shall be due, his, her or their agent or attorney, may apply to any Court of Record therein, or Judge thereof, in vacation, and make satisfactory proof to such Court or Judge in vacation, of the escape aforesaid, and that the person escaping owed service or labor to such party. Whereupon the Court shall cause a record to be

made of the matters so proved, and also a general description of the person so escaping, with such convenient certainty as may be; and a transcript of such record authenticated by the attestation of the Clerk and of the seal of the said Court, being produced in any other State, Territory or District in which the person so escaping may be found, and being exhibited to any Judge, Commissioner or other officer authorized by the law of the United States to cause persons escaping from service or labor to be delivered up, shall be held and taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned. And upon the production by the said party of other and further evidence, if necessary, either oral or by affidavit, in addition to what is contained in the said record, of the identity of the person escaping, he or she shall be delivered up to the claimant. And the said Court, Commissioner, Judge, or other person, authorized by this act to grant certificates to claimants of fugitives, shall, upon the production of the record and other evidences aforesaid, grant to such claimant a certificate of his right to take any such person identified and proved to be owing service or labor as aforesaid, which certificate shall authorize such claimant to seize or arrest and transport such person to the State or Territory from which he escaped."

Under this section of the act, a Southern slaveholder can go into a Southern court and make oath that a person whom he describes is his slave and has escaped from him. This testimony is given and recorded in the absence of and with no notice to the person who is to be affected by it. It is the testimony of the alleged owner himself, and of such parties as he chooses to summon to the service of his designs. It is taken and recorded without any scrutiny into its correctness or test of its authenticity, and made a matter of record.

And this record, so made up, is made absolutely *conclusive* upon the liberty of a man absent in another State, and ignorant of the whole proceedings. Was there ever a greater outrage than this sought to be perpetrated under the forms of law?

Gentlemen, the learned attorney for the Government has said to you in advance, that I should denounce this law and endeavor to excite your passions and arouse your indignation against it, for the purpose of obtaining from your prejudices what I could not secure by an appeal to your reason and judgment.

If I have brought up these provisions of this law in review before you, it has not been for the purpose of exciting your prejudices. It has been because the dangers and abuses to which this law is liable in its execution, impose peculiar duties on every citizen of this free State; and within the legitimate and proper range of these duties, as I will show you hereafter, are embraced nearly all the acts which are offered in evidence against this defendant.

Not, then, to inflame your passions, not to excite your prejudices, do I call your attention to the provisions of this law, but to make you fully understand and appreciate the great dangers to the rights of free men which it occasions, to make you see and feel that is only by vigilant watchfulness and prompt action on the part of the citizens whenever it is attempted to be enforced, that the unlawful arrest and enslavement of free men can be prevented.

Recur again, then, in this view of the subject, to the provisions of this 10th section, and see what abuses may be perpetrated against the rights of free citizens under this section of the act.

Here, for example, is this Phillipps, a slaveholder from Southern Missouri. He has been for weeks in this city as a witness in these prosecutions. What is to prevent him from obtaining accurate descriptions of the colored men whom he meets in the streets, and upon his return making up a record against any person upon whom his gaze has fastened. He has only to step into a Southern Court and have his descriptions made a matter of record and swear to them, and the work is done. The man whom he has selected is quietly pursuing his customary avocation, in utter ignorance that in the meanwhile, in a far off State, his liberty has been sworn away, gone forever from him, even without notice and without a hearing. The slave-catcher comes into the State, obtains his process, drags his victim before the Commissioner, produces his record, and shows, as of course it is easy to do, the identity of the person arrested with the one described. But, says the man arrested, I am no slave—I am a free man; I can prove it; I will call my neighbors to establish it. But the commissioner has no power to look at his proofs. The record is conclusive of the fact of slavery. No question but identity is left to him. If the party arrested has his free papers in his pocket, the Commissioner has no right to regard them, and it was so expressly held in the case of Gorham, at Detroit.

It may be said that no such case could arise without per-

jury and fraud on the part of the claimants. Well, I am not going to ask you to admit that men, educated under the influence of slavery, are worse than other men, but surely it will not be claimed that they are better? And does not our daily experience here in the North, both in the places of trade and the Courts, teach us that fraud and falsehood and perjury are of frequent occurrence? Under the temptation which cupidity and the lust of gain create, men become callous to the wickedness of false swearing. Have not custom house oaths become a by-word? And what are custom house oaths but unblushing violations of honesty and truth, committed for the sake of securing the profit to be derived from defrauding the revenue laws of the country?

Why, it was stated in one of the public journals not long since, that a letter was found in the possession of a notorious counterfeiter, from a Southern man, containing these words: "Go among the niggers, find out their marks and scars, send good descriptions of them, and I'll find owners." Whether this be fact or fiction, I know not, but it is easy to see that such conspiracies against the liberties of men could readily be carried out under this law.

No, gentlemen, it is not safe, it is not right to trust the liberties of men to the chances of *ex-parte* evidence. There is no safety except in a jury trial.

But it is said in reply to this objection, that the person delivered up under this law does have a jury trial; that he has such trial in the State from which he escaped, and to which he is returned, and an analogy is sought to be made between this law and the law providing for the return of fugitives from public justice.

This argument is a specious delusion. It is as unsound in reason as it is false in experience. It can deceive no one who does not wish to be deceived himself or desire to deceive others.

No man can be arrested as a fugitive from justice, until he has been duly indicted by a Grand Jury for some offense, recognized as a crime according to the common law of the country. When he is arrested, he is delivered into the hands of sworn officers of the law, to be taken by them to the court before which the indictment is pending for trial. The arrest and the trial are parts of one proceeding, and unless tried and convicted, the arrested party is again discharged.

In the case of a person claimed to be a slave, the Commissioner delivers the person into the hands of the person

claiming him as a slave. He becomes a slave to all intents and purposes by the decision. The person into whose hands he is delivered, is under no obligation to carry him back to the State from which he escaped, or to carry him to any place with a view to any further trial of the right to his liberty. The master may do as he pleases with him; he is subject to no control, and subjected to no new duty or liability. He may sell the man as a slave—he may scourge and lacerate and abuse him. He is his, finally and forever.

It is true, that as a slave, he has to a very limited extent, and under such restrictions and limitations as make it of very little practical value, the right in some of the States to institute proceedings to test his right to freedom before a jury. But this is no answer to the objection.

It is the making a man a slave at all without the verdict of a jury upon the fact of freedom, of which we complain. Here is a man found in a free State—the law presumes him to be free. He is entitled to the benefit of that presumption until the contrary is established by legal evidence and in legal manner. We ask for the rights of freemen and receive only the rights of slaves.

The parallel between the two cases of fugitives from justice and labor would be correct if the Commissioner, instead of sending the fugitive from justice back for trial in the custody of sworn officers of the law, were to commit him to the penitentiary for life; for such sentence would not be more final and conclusive in its effect than that which, by consigning a man to his claimant under this law, condemns him to the life-long bondage of a slave.

Nor is there any reason for taking the alleged fugitive away from the State where he is arrested, for the purpose of a trial elsewhere (if any such trial were within the contemplation or provision of the statute,) as there is in the case of fugitives from justice. In criminal offenses the venue is local. They can be tried only in the county where they were committed. But questions of property are transitory, and are triable as well in one place as in another. And the question of title to a man claimed as a slave is a pure question of property. It has been so held from the earliest records of the common law. If a man from a slave State claims property in a bale of cotton found in this State, he does not transport the property elsewhere to try the title to it. It is tried here, before a jury, and there is no principle of the law which justifies a removal of the property out of the defendant's possession until the title of

the claimant is established by the judgment of a court of law.

If this doctrine be true with reference to personal property of every nature, with how much more force does it apply to cases where the right to be tried is that of a citizen of a free State to his personal liberty. By the law of the free States he is presumed to be free until the contrary is established. By the law of the slave States, if he have a certain admixture of African blood, he is presumed to be a slave until the contrary is established. There is, then, a most vital distinction between a trial by jury in a slave State, (even if any such were given under this law, which is not the case,) and the right of trial by jury in a free State. In the one case the law proves his freedom, and the burden of proof is on the claimant to establish the fact of slavery. In the other, the law proves him to be a slave, and the burden is on him to prove his freedom.

Is it asking too much, that a free man, in a free State, should be entitled to be adjudged a slave by the verdict of a jury of his countrymen before he be delivered over into bondage?

But it is said that if a trial by jury were given, under the law, it would render it a nullity—that northern juries would refuse to find in conformity with the facts and the law. I deny the assertion. It is a libel upon northern juries. It is answered by these very prosecutions themselves. How are the violations of this law to be punished? Must not all these be tried before a northern jury, and is it an easier matter to induce a jury to convict a man under this law, to impose fines and imprisonment on those who rescue a slave, than it would be to establish the claimant's right of property in the slave so rescued? Why, in every prosecution under this law, the title of the master to the alleged slave has to be found by the jury, under their oaths, as an essential prerequisite to every conviction.

If the jury can be relied on to find according to the fact in a prosecution against a white citizen, surely they would not have greater difficulty in finding the same fact in a suit against a negro claimed as a slave.

I must not close my review of the objectionable features of this law, without alluding to one so odious as to meet with the disapproval even of the learned counsel who opened this case on the part of he Government.

I mean that provision which authorizes the slave owner and his agents to require the assistance of the citizens of

the free States in the capture of runaway slaves. It would seem as if, in the contemplation of this law, the free States of this Union were to become the hunting ground for slaves, and the free men who inhabit them were to become slave-catchers at the beck and nod of the slaveholders.

It was not strange that the distinguished Senator from Massachusetts, that noble man, whose name is dear to every lover of liberty and humanity the world over, should have said, in reply to the question of Mr. Butler, of South Carolina, whether he would aid in the capture and rendition of a fugitive under this law, "Is thy servant a dog, that he should do this thing?"

I have now finished my review of the provisions of this law, and I think I cannot have failed to demonstrate to the entire satisfaction of every intelligent and candid mind, that there are great liabilities to abuse and great dangers to the rights of free men necessarily consequent upon the execution of this law, and it is this proposition to which I desire your united and unqualified assent, as the first position in the argument which I make to you in this cause.

In that argument, gentlemen, I propose to address myself wholly to your understandings—to make no appeals to your prejudice or passion.

The learned counsel for the Government have said that I should address you as political partisans, and seek to gain your verdict by an appeal to party prejudices. It was a strange remark to be made in this case. It would seem that if there were any one who should deprecate appeals to party, who should implore this jury to rise out of the low level of partisan politics into the higher region of reason, conscience and truth, it would be the counsel who is now addressing a jury of which but two or three at the most are members of the same political party with himself. What have I to gain at your hands through the power of party prejudice? No, gentlemen, it is for me to appeal to you to forget that you are Democrats, to forget that you are Republicans, and remember only that you are jurors. If I cannot obtain a verdict by an appeal to your reason and your intelligence, I have certainly nothing to hope for by an appeal to your political prejudices.

Gentlemen, for myself, I belong to no party which is disloyal to the Constitution of my country, or which sanctions any violation of the laws. I shall ask nothing at your hands in this argument but what I can ask under the law and the evidence, and I solicit your earnest and considerate atten-

tion to all which in the discharge of my duty to this cause, I shall have to say to you.

The next proposition to which I ask your assent, and which will commend itself to your highest judgment, both as citizens and as men, is this:

II. That it is the duty of every citizen, to take a personal interest in securing the liberty of every other citizen in the community from unlawful invasion, and it is his right, as well as his duty, to take all lawful action to prevent such unlawful invasion.

This doctrine not only approves itself to our own judgment, as citizens of a free State, where to invade the liberty and rights of the humblest member of the constituency is to violate the rights and liberties of the State itself, but it is sanctioned by express judicial authority even in England, where the rights and liberties of the citizen are not supposed to be more highly regarded or more jealously secured than in the Republic of the United States.

I will read to you from a work of acknowledged authority in our courts—"Russell on Crimes"—a passage upon this subject.

"One Bray, who was a constable of St. Margaret's parish, London, came into the parish of St. Paul, Covent Garden, where he was no constable, and consequently had no authority, and there took up one Ann Dekins, against whom he had no warrant. In a controversy which ensued in reference to this arrest, the constable was killed, and the question was whether the unlawful arrest was a sufficient provocation to reduce the crime from murder to manslaughter.

"It was held, after elaborate argument, that the prisoners had sufficient provocation on the ground "*that if one be imprisoned upon an unlawful authority, is it a sufficient provocation to all people out of compassion, and much more where it is done under a color of justice,* AND THAT WHERE THE LIBERTY OF THE SUBJECT IS INVADED IT IS A PROVOCATION TO ALL THE SUBJECTS OF ENGLAND."

Gentlemen, it is the maxim of a cold and selfish as well as false philosophy, that is no concern of mine when the liberties of others are taken away. The idea is as unfounded in sound reason and human experience as it is opposed to the high obligation of the citizen, and unworthy of the nobler and more generous sentiments of human nature.

Algernon Sidney, on the night before his execution, said to his nephew in prison:

"I value not my own life a chip, but what concerns me is, that the law which takes away my life may hang every citizen of England whenever it is thought convenient."

The thought which, in the great soul of this noble man, rose above all thoughts of self, and in view of which the loss of his own life was as nothing to him, was, that the blow which destroyed him was destructive of the rights of every citizen of his country—that in his person Liberty itself was struck down.

Why, gentlemen, you all remember the thrill of enthusiasm which ran through the country when Commodore Ingraham anchored a United States ship-of-war in front of a city under Austrian rule, and cleared the decks for action, in support of his demand for the release of Martin Kosta, an American citizen, unlawfully seized and deprived of his liberty. Why, Martin Kosta was a very insignificant individual. He has subsequently resided in this city, and personally is of very little account. But the whole nation applauded the action of Commodore Ingraham. Why? Because his action represented the whole nation, and was a noble assertion of the great truth, that the liberty of the humblest citizen is regarded as a matter so precious and so sacred as to justly enlist the whole power of the nation in its behalf.

But a short time since, a young Jewish boy, by the name of Mortara, was unlawfully held in custody by the ecclesiastical authority in Italy; and from one end of the world to the other, the Jewish people interested themselves in the matter. Of what consequence was it, it might be asked, to a Jew here in America, whether Mortara were unlawfully held or not? It did not affect him; it did not lessen his profits or interfere with his business. But every Jew could see beneath the arrest of this Jewish boy, a principle of despotic power, which, if unrebuked and unrestrained, might overthrow the rights of conscience and destroy the liberty of every other Jew. Such will ever be the sentiments which will animate a people who prize their liberties and expect to retain them.

In those ages of history when men stood by and saw their fellow men borne away to imprisonment or death, at the will of the government, without law or right, and either cared not or dared not raise a voice or hand in their behalf, liberty was but a name. It has cost ages of struggle, and oceans of blood, to secure to mankind the great rights of personal liberty, which are the birthright of every citi-

zen of America; and when we become indifferent to the invasion of these rights, we have taken the first step toward their overthrow. It is fitly and truly said that "Eternal vigilance is the price of liberty."

If such be the high duty of every freeman with respect to all unlawful invasions of the liberties of the citizen, then there must be left to the citizen, under the fugitive slave law, without criminality, the performance of every act which is just, necessary and proper in the lawful execution of that duty. The obligation to obey the law must not be so construed as to make it criminal in the citizen to vigilantly investigate every attempt to enforce its execution, and promptly and efficiently to guard against and prevent all unlawful outrages on the liberties of the citizen which may be sought to be perpetrated under its sanction.

If I see a man forcibly seize one of my fellow men, claiming him as his slave and with the intention to bear him away to life-long bondage, am I to stand coldly by in silent indifference and unconcern? Am I to leave him to his fate without an effort to investigate the matter? Such a doctrine as this may commend itself to men who have no hearts to feel—men who in the dead insensibility of their natures to everything but what touches their own individual interests, cannot rise to the conception of a generous sentiment, much less to the performance of an unselfish action; but it is not the feeling of men who possess a human nature. Nor, I trust, gentlemen, would it make any difference to any man, in such a case, that the person so seized, and about to be hurried off to everlasting bondage, had a skin darker than his own.

What then is to be done when this law is sought to be enforced in the free States. I have shown you that there is the greatest liability to abuses under it. I have proved to you that its execution is pregnant with dangers to the liberties of the citizen. It is clear then that some action is demanded on the part of those who duly value the liberty of the freemen of a free State under such circumstances.

What then may be lawfully done? What ought always to be done wherever the execution of this law is attempted, if we would prevent these abuses and guard against these dangers?

Manifestly the first step is to secure as full, thorough, searching investigation into the facts and proceedings as is possible. To compel the production of the process of arrest—to subject such process to legal scrutiny—to have all

the facts as carefully examined into and tested as the summary character of the proceedings will permit, and to make every necessary arrangement to prevent the abduction of the party claimed as a slave surreptitiously or violently without lawful sanction.

All this every man would, it seems to me, admit without hesitation ought to be done, and done promptly and effectually in every case where this law is attempted to be executed. All this would be wholly unnecessary if a jury trial were to be had under the law, to determine the question of freedom or slavery, for then every man would rest satisfied that justice would be done through the Courts of the country. It is because a man may be seized in a moment and before the sun goes down, borne away from a free State into life-long slavery, without a trial, that prompt, efficient and decisive action is necessary in such cases.

If, then, such action as I have indicated, is not only right and proper, but is demanded by our regard for the rights of freemen, then it is lawful for me to assemble my friends and neighbors together, to interest them in the matter, to relate to them the facts, to cause public meetings to be held, committees to be appointed, counsel to be engaged, and every arrangement made, not only to secure the needful investigation, but to provide whatever force may be requisite to prevent the forcible or secret abduction of the accused person before such investigation can be had, or in violation of the law.

It may be said that I am consuming time in contending for what is too clear and unquestionable to admit of debate or denial. If I have dwelt so fully upon these principles and views, which I have been considering, it is because they dispose effectually of almost the entire evidence in this cause. It requires but the fair application of these principles to the testimony before you establish to your entire satisfaction that every word and act of the defendant prior to the final decision of Judge Caton is fully explained, justified, and deprived of all criminality. In the light of these principles then let us proceed to examine the evidence.

The defendant is on trial for a specific charge set forth in the indictment.

That charge is that he rescued or aided in the rescue of a fugitive from labor, called Jim, belonging to one Richard Phillipps, from the custody of Isaac N. Albright, then and there holding him, as a Deputy Marshal of the United States, for the Southern District of Illinois, by virtue of a Commissioner's warrant for the arrest of such fugitive.

To establish the offense charged in the indictment, it is indispensably necessary that the following facts should be proven:

1. That the negro, Jim, was a slave held to service to Phillipps under the law of the State of Missouri, and that while so held he escaped from such service into the State of Illinois.

2. That a lawful warrant was issued by a lawful officer for the arrest of such fugitive.

3. That such warrant was delivered to Isaac N. Albright to be executed, and that said Albright was a Deputy United States Marshal for the Southern District of Illinois, and that said Albright arrested and held said negro, Jim, under said warrant.

4. That the *defendant had due notice or knowledge of these facts.*

5. That he rescued or aided in the rescue of said slave *after such notice.*

The first three propositions I do not propose to discuss. They involve questions of law which were very elaborately argued in a former trial, and having been decided by the Court, they are to be assumed to be established for the purposes of this trial.

It is, therefore, only with the two remaining questions that we have anything to do.

Now, in the consideration of the evidence in this case, I propose to consider, first, what was done by the defendant prior to the decision of Judge Caton, that the negro was lawfully held by Albright, and must be remanded to his custody; and, second, what appears in evidence against him after that decision.

This is a most important division of the evidence, and one which is most necessary to be made. For it is manifest that the same words and acts which subsequent to that decision would have been criminal, and justly attributable to an unlawful purpose to rescue the slave from legal custody, might, if said or done prior to that decision, be all consistent with a lawful and proper intention, and referrable to just and proper motives.

I. The first proposition which I will undertake to demonstrate to your entire satisfaction from the evidence, is this, that *prior to the examination before Judge Caton,* there is not only no evidence in the case establishing any notice to this defendant, that Jim was a slave, and was held under a legal warrant, issued under this law, for his arrest, but that

on the contrary, this defendant, with the other citizens of Ottawa, had just reason to believe, from the facts which have been proven in evidence relating to the original arrest and subsequent treatment of this man, and from the conduct of the parties connected with these transactions, that these parties were engaged in any unlawful conspiracy to kidnap this man, and carry him into slavery.

I have endeavored to prove to you that *any* arrest under this law is a sufficient justification to every citizen to take such measures as are necessary to test its legality and prevent the consummation of an outrage against personal liberty under the cover of law.

But the circumstances connected with the arrest of this man, Jim, were of such a character, and the subsequent treatment of him was such as rightly to arouse the public feeling and create the impression in the public mind that this man was in the hands of these who had no respect for the law of the land, and who meant to seize and carry him away without right or authority.

The fact stands out uncontradicted and undeniable upon the evidence that this man, Jim, had been seized by a set of men who are engaged in the business of kidnapping negroes and running them out of the State, or delivering them up for a price to pretended owners.

It is not denied that on the soil of this free State, such outrages as these are being constantly committed. The men, Jones and Curtley, were the leaders in this infernal wickedness. They arrested this man without process, without any complaint against him, and carried him into Union county. He was there committed to jail by a Judge of that county, because he had no free papers! There was actually, gentlemen, a man found filling a judicial position in this State, so ignorant of law that he did not know that every man found in a free State is presumed to be free! He supposed that it was a necessary pre-requisite to the right of a man of dark complexion to breathe the free air and walk the broad prairies of this free State, that he should have a certificate of freedom in his pocket. He has learned, I trust, by this time, that under the constitution and laws of this State, every man, white or black, who is found within its limits is presumed to be free.

To relieve this man from this unlawful imprisonment, Judge Caton issued a writ of *habeas corpus*. This writ was delivered to the jailor of Union county, on the 7th or 8th of October, and yet, gentlemen, notwithstanding this—and

I call your attention to this as a most important fact in the chain of circumstances which led the citizens of Ottawa to believe that there was an unlawful conspiracy to deprive this man of his liberty—notwithstanding this writ was served on the 7th or 8th of October, on Albright, and notwithstanding it takes but two days to go from Jonesboro' to Ottawa, that it was not until the 18th of October that this jailor started for Ottawa with the negro. During all this time, he and these with whom he was acting, kept Jim in confinement in jail contrary to law and in contempt of the great writ of *habeas corpus*, under the hand and seal of the highest judicial officer in the State. Was not this a high-handed violation of law? Why this writ of *habeas corpus* is the highest writ known to the law. It is issued for the very purpose of preventing any invasion of personal liberty. It commanded Albright to bring this man before Judge Caton *forthwith*. Every hour of unnecessary delay after the service of this process, was a contempt of this great Writ of Right. And yet these men disregarded this writ for more than ten days, holding this man, Jim, during all that time in unlawful confinement. During nearly all this time there was no person claiming any right to this man; but they were holding him in jail in defiance of the writ, while he was being advertised in the newspapers for the purpose of finding an owner and obtaining a reward. These facts were all known at Ottawa prior to this examination before Judge Caton. Were they not of a nature justly to occasion a belief in an intention to run this man out of the State in defiance of all law and of all right?

He had been treated with the greatest barbarity. Arrested without law, he was dragged through the country chained like a felon, and thrust into prison. And at last, when brought by Albright under the writ of *habeas corpus* a trace chain was fastened to his leg, and his arms pinioned with ropes, and he was led along the streets of the city of Ottawa in this inhuman manner. With the party came the original kidnappers and negro stealers, Jones, Curtley and McKinney, men whose notorious deeds in this devilish business had made their characters so infamous that even the jailor, Albright, revolted from being considered as one of their company!

Up to this time no knowledge of Phillipps or of his claim to this man had ever reached the ears of the people of Ottawa. Phillipps did not make his appearance at Jonesboro' until just before the departure of Albright for Ottawa.

The first which the people of Ottawa knew of him, was that he came up to that city in company with these kidnappers, with whom he was apparently in co-operation.

Now I submit whether these facts did not justly authorize the belief that this party had leagued together to carry out and consummate by force or fraud the unlawful abduction of this man whom they had before seized, imprisoned and held in custody in violation of the laws of the State.

Where is the evidence in this cause which furnishes any reason for a different belief being entertained by this defendant prior to the examination before Judge Caton?

It is true that these men had a warrant under the Fugitive Slave Law, and it is true also, that that warrant has, after a day's discussion, and with an intimation of some doubts as to its validity, been sustained by this Court. And it is true, gentlemen, that the honest belief that a warrant is void, furnishes no excuse to the party who resists it, if it turns out to be valid.

But the position which I take in reference to the warrant is this: That the parties who held that warrant, *themselves doubted its validity;* that they, by their conduct, created the impression that it was not relied on, and would not be attempted to be enforced, and that the negro would be taken away without any process.

Now, there were but two processes issued against Jim—one was the mittimus in Union county, from which his discharge under the *habeas corpus* was certain—the other was the Commissioner's writ. Now, if the conduct of these men was such as fairly to create the impression that they regarded this latter writ as invalid and worthless, and yet they came in force, armed, and in company with the most notorious negro-stealers in the State, the citizens might well suppose that such a company could have come only for the purpose of a lawless and forcible seizure and abduction of this man.

For what other purpose could these abandoned and infamous men have been brought way from Union county to Ottawa?

If Phillipps had lawful process he would not require the aid of the most notorious violators of law.

In this connexion the apparent defects in the process itself are of great importance. For if there were defects on the face of the warrant of such a character as would naturally cause any man to regard it as invalid, it would be natural for men having such a document to act as though they did so regard it.

Now this warrant has no seal. It is addressed to the Marshal of the *Southern* District of Illinois, and is expressly on its face limited in its operation to the *Southern* District of Illinois. It only authorizes the arrest of Jim, "*if he is found in the Southern District.*"

Now there are very few men who would imagine for a moment, until the decision of this Court had instructed them otherwise, that a writ issued in the *Southern* District of Illinois, directed to the Marshal of that District and expressly required upon its face, to be served in that District, could be served in the *Northern* District. The best lawyers in Ottawa unhesitatingly advised to the contrary—all the counsel of this defendant so advised at the commencement of this defence. They entertained no doubt on the subject at all, and confidently supposed it would be so ruled by this Court.

Now the fact that this Court has decided that by some peculiar construction of this Fugitive Slave Law, this writ runs throughout the State, does not affect the view in which I present the matter. For if the defect in the writ was one which would naturally be regarded by the parties who held it as fatal to any use of it in the *Northern* District of Illinois, then they would be likely to act as if they to regarded it.

In addition to these defects, the officer deputized to serve the writ had been wrongly designated in the deputation.

These defects in the warrant were such as to cause the lawyers who examined it to declare it incapable of being lawfully used for the arrest of the negro. The parties who held it acted as if they were of the same opinion, for they kept the warrant in the back ground. It was not for some time and without some effort that the committee of lawyers got a sight of it in a lawyer's office in Ottawa. Phillipps, when applied to, refused all statements in regard to the process, disclaimed any connection with the custody of the negro, and referred everybody to Albright. Albright stated that he held Jim on the *mittimus*, saying nothing about the warrant, and it was only by some pressing that they got him to give them any opportunity to get a sight of the warrant.

Albright never qualified as deputy under the warrant until the examination before Judge Caton.

I say, then, without hesitation, and I appeal to your intelligent judgment to sustain me in the assertion, that there is nothing in the evidence in this cause to bring home to this

defendant any knowledge or belief that the negro, Jim, was a slave of Phillipps' or that any valid process for his arrest could be enforced against the negro, until the examination before Judge Caton, and the announcement of his decision at the court house.

And still further, I insist that the facts which I have stated, were such as justly to furnish grounds for the belief that there was a design on the part of these men to carry this man off, forcibly and in violation of the law.

Under these circumstances, did not their duty as citizens and men, require of them to take every step necessary to prevent the consummation of such a lawless outrage. Had they not the right—nay, was it not their duty to hold meetings, to appoint committees, to employ counsel, to meet and talk over this matter, to lay their plans to prevent it, to secure everything necessary to rescue this man from the hands of these kidnappers, if they attempted to carry him off by force or fraud.

This view of the case covers every particle of the evidence touching the conduct of this defendant prior to the examination before Judge Caton.

May not the whole of this evidence be just as properly—nay, with far greater propriety, be referrable to a lawful and proper motive than to an unlawful one? What word or act is in evidence proving that the meeting which the defendant attended the previous night had any unlawful purpose? But if there were any doubt on the subject, it would be your duty to throw the doubt in favor of the defendant.

I boldly maintain, then, and I challenge the learned counsel for the United States to show the contrary, that prior to the examination before Judge Caton, there is nothing in the evidence in this case which can justly be held to affect the defendant with any criminal intent or to prevent him from receiving a verdict of acquittal at your hands.

You have him, then, at the court house, on the day of the examination before Judge Caton, as perfectly free from all presumption of wrong as any witness who has appeared upon the stand, even including the learned Judge himself.

He attended the examination as a spectator, as hundreds of others did. It was his right and his duty to be there. He listened to the opinion of the Judge. He heard the decision which consigned the negro to the custody of the Marshal. From that moment I admit he could do no act and say no word which should aid the escape of this negro from the custody of the officer without a violation of this law.

If the evidence establishes any participation in this rescue by him, after this decision, then it will be your duty to convict him; but if it fails to prove any such participation, or if it leaves a reasonable doubt of the fact, it will be your duty, and I have no doubt, your most agreeable duty, to acquit him.

II. Let us, then, consider the evidence touching the conduct of the defendant subsequent to the decision of Judge Caton.

The whole evidence in this case tending to show any connection of this defendant with the rescue, after the decision of Judge Caton is given by four witnesses—Spicer, Crandall, Armstrong and Anderson. No other witness has testified in relation to any matter occurring subsequent to the examination.

Two of these witnesses, Spicer and Crandall, testify to the same act of the defendant; one of them, Anderson, testifies to another act, and two, Crandall and Armstrong, testify to alleged admissions of the defendant.

The only act of the defendant's to which Spicer and Crandall testify, is his pointing his finger. They say they saw the defendant look at the negro, and point to the open window, and Spicer thinks that this gesture was repeated. It does not clearly appear that the negro saw this gesture, or that it had any reference to, or connection with the rescue. So far as the facts of the rescue are in evidence they contradict any such idea, for no rescue was made or attempted through the window. This is every iota of the evidence relating to this act, which is one of the acts relied on to show the defendant's participation in the rescue.

Now this evidence, giving it its fullest effect, neither proves or tends to prove that the defendant rescued the slave or aided in such rescue.

It is clear that it does not prove that he rescued him, for it had nothing to do with the rescue. The gesture was made at a different time, and before the rescue was attempted, and the rescue was made by other parties and in an entirely different manner from that which was indicated (as is claimed) by the gesture. Nor does the evidence show that this act of the defendant's *aided* the rescue; on the contrary, the evidence is that Spicer reported at once to the Marshal the gesture which he had seen, and that the result of that gesture was that the negro was taken into closer custody by the officer. So far as the facts appear, then, this gesture of the defendant, if it had any effect at all, had the effect to *prevent* the rescue and not to *aid* it.

This view is giving to the gesture as proven, the meaning and intention assigned to it by the prosecution. But what is more uncertain, more liable to be misunderstood, more unreliable as the basis of a verdict which is to disgrace one of your fellow men and send him to the penitentiary, than a gesture, a movement of the arm, a pointing of the finger! Not a word was said. There is nothing in the case to explain the gesture, or give it meaning.

Now suppose this were the only evidence in the cause, and you were asked to convict this defendant of the rescue of a slave because he pointed his finger to an open window through which no rescue was made, would it not strike you with some astonishment to have the Attorney of the United States ask you to find a verdict upon such evidence.

Gentlemen, it is all the evidence in the cause which touches the defendant, (outside of the alleged admissions, and Anderson's, which I will consider presently.)

For if I have succeeded in showing to you that every word or act of the defendant's previous to that examination, is referrable to a just and lawful motive, done in pursuance of his duty as a man and a citizen, then he stands before you in that court room as perfectly free from any presumption of guilt as any other person who was present.

I maintain, that to convict a man under a law like this, which imposes fine and imprisonment on the best men in the community, for acts which but for the law, would be approved as humane and praiseworthy, upon evidence like this, would be treating a man indicted under this law more unfairly than you would treat the worst of felons.

What? convict a man of a crime upon a simple gesture! a movement of the arm—a pointing of the finger? Why, of how many different constructions is such an act susceptible?

It would be easy to suggest many explanations of this movement of the arm, entirely different from that which the prosecution give you of it, and all of which might just as well consist with the facts proven.

But, suppose on the whole, there is some preponderance of the evidence in some of your minds towards the conclusion of an unlawful intention on the part of the defendant in making this gesture.

This will not do. It is only in *civil* cases that the jury may decide for the party in whose favor the evidence *preponderates*. In *criminal* trials, the party accused is always

entitled to the legal presumption in favor of innocence. Neither a mere *preponderance* of evidence nor any *weight* of preponderant evidence is sufficient for the purpose unless it generates full belief of the fact *to the exclusion of every reasonable doubt.* It is not enough that the evidence tends to show guilt; *it must be absolutely inconsistent with any reasonable hypothesis of innocence.*

But, gentlemen, go a step further and assume the explanation of the Government of this gesture to be the true one. Suppose he did point to the slave and to the window, as a place of possible escape, and had said at the same time, "My poor fellow, there is the window, and there is God Almighty's world of light and liberty outside; we cannot help you; we are bound hand and foot by this law; we can give you no aid—nay, if you attempt to escape through the window and the Marshal calls upon us to prevent you, we shall have to do so; but if you can achieve your own liberty in spite of us, we are not responsible," would that have made him guilty of the rescue or of aiding in the rescue of the slave?

No, gentlemen, this evidence is wholly unsatisfactory and insufficient. It does not begin to make out a case against this defendant. If he were on trial for murder or felony, you would revolt from convicting him upon such testimony, and is this defendant in this case to be convicted upon less evidence than would induce you to convict a man for the most heinous crime? Is this defendant, with his unblemished character, won by twenty years of virtuous industry in the community in which he lives, to be treated by you worse than a felon or a murderer?

The next evidence to be considered is that of the alleged *admissions* of the defendant. These are testified to by two witnesses—Armstrong and Crandall.

There is no species of evidence which is regarded by the books as more unreliable and unsatisfactory than this. The most eminent judges and best writers upon the law of evidence have held that it is to be received with the greatest caution—that it is subject to imperfection and mistake. Such proof may be easily fabricated, and words are often misreported through ignorance, inattention or malice.

We have a striking instance of it in this very case. The witness, Armstrong, at first stated in a general way, that he had heard the defendant admit that he had a hand in the rescue; but when the witness was closely questioned, it turned out that what he had heard was in a general conversa-

tion by a number of persons in a store, at which the defendant was present, and he was unable to state anything reliable which the defendant himself said, and finally admitted that it was only an impression and inference, formed by him from the whole conversation, and which he could not swear was founded upon anything which the defendant said, but might have arisen entirely from what was said by others.

This testimony was manifestly incompetent, and was so held by the Court. All which he recollected of ever hearing the defendant say, and all which is evidence in this case, is "that Jim had escaped, and he was glad of it."

Was there anything wrong in these words? I have no doubt they expressed the honest feelings of his heart. They certainly express those of mine.

I can say, too, with the deepest satisfaction, "Jim has escaped, and I am glad of it." If that be treason, make the most of it. Yes, I am glad Jim has escaped—glad that another poor hunted victim of oppression and wrong, has escaped from the dark prison house of slavery, and is safe in a land where the sound of the fetter and the lash are never heard.

Why, gentlemen, when you listened to the narrative of his escape—when you followed him in his bounding, flying course, through that hall, and beheld that magnificent leap for freedom, by which the fence was cleared, and saw him fairly on his way to liberty, was there a man of you in whose heart there was not a feeling of gladness? Did you wish to have him stopped? If there is such a man, I do not envy him; but I have too much respect for you to believe so.

There is, then, nothing at all in the testimony of Armstrong, so far as it is competent, which furnishes any ground for a conviction on this indictment.

The other witness, Crandall, testifies to a conversation had with the defendant at the Revere House in this city, since these trials have been pending, in which the defendant told him that he opened the window himself, and would have thrown the negro out of it if Spicer had not prevented it.

This testimony furnishes the most striking example of the danger of this species of testimony. It leaves the party charged with a crime at the mercy of the witness. He may swear to what he pleases, as it is impossible to contradict him. This witness said Mr. Rathbun was present and near enough to have heard the conversation. We called

Mr. Rathbun, and he swears he heard no such conversation as the witness relates. If a man is to be convicted on such evidence as this, he is powerless. It was given just at the close of the case. There was no opportunity to impeach the witness, and none of course to contradict his statement. But, gentlemen, there is one thing which impeaches it sufficiently to make it proper for you to discard it, and that is its own inherent improbability.

Here was this man about to be tried for an offense punishable by fine and imprisonment. This witness, Crandall, had just been a witness against the defendant in the former trial—a witness who then swore to conversations which other witnesses were called to contradict. If this defendant is a man of ordinary intelligence, is it to be credited that he would furnish the worst and most malicious witness against him with evidence to convict him? That he would do this at the very time when his trial was about to come on, and this very man was then in attendance as a witness against him?

There are some things so contrary to all human experience—so intrinsically improbable—that the mind instinctively rejects them as false. Gentlemen, I pronounce the whole statement of this conversation by this witness, to be a wanton, malicious falsehood.

We have no means of contradicting it except what we have already given in the evidence of Rathbun, but by the statement of the defendant himself. He is here in court. He is a man sworn to be of high, unblemished character, and I challenge the prosecution to put him upon his oath, and ask him whether any such conversation ever occurred.

[Mr. Stout here arose and offered to be sworn, but the offer was declined by the District Attorney.]

The only other evidence affecting the defendant, is the testimony of Anderson. He swears that he saw the defendant seize the officer who had the negro in charge, by the shoulders, and bend his head down nearly to the floor, and keep him in this position for some time, until after the negro had escaped.

Now, if you believe this evidence, there is an end of this case. No act could more decisively connect this defendant with the rescue than that which he has stated.

But, gentlemen, the statement is at war with all the other evidence in the case, and is utterly incredible. The witness is either mistaken or he is forsworn.

In the first place, he says the person whom the defend-

ant seized and held in this manner, was *the officer in charge of the negro*, and this in fact is the most material point in the evidence; for if it were some other man and not the officer who was held down, the character of the act would depend entirely on who the individual was; for if he were a person trying to rescue the slave, then in holding him he would have been *aiding* and not *resisting* the officer.

Now this witness could not identify the officer Albright, at all, either in his dress or his appearance. He could not remember whether he was pock-marked. Albright is a man of very marked and decided personal appearance. No man who has once seen him could ever forget him. But even when Albright stood up, he was not certain whether that was the man, nor could he say that Phillipps, who looks entirely different, was not the man; so that it is obvious he has no clear recollection which enables him to identify the individual who was thus assaulted, which, as I have said is the very material point of his evidence.

But further, we called Albright himself, who says he has no recollection of any such event. Now, it is not credible—it is not within the range of possibility—that a man of Albright's stalwart form and vigorous frame could be seized and bent over nearly to the floor and held in this position without knowing it. In such a case the evidence of Albright is just as conclusive as the most positive testimony. It does not stand on the same basis as mere negative evidence. It was an act done to him personally, and it could not have been done to him without his knowledge and recollection. In addition to this, it is a fact which no other witness has sworn to. The matters which occurred in that court room have been the subject of investigation here for weeks. Scores of witnesses have been examined in relation to them, and this is the first and only witness who has sworn to any such fact as that stated by this witness. If so important a transaction as this occurred in that room, it could not but have excited the observation of others. It was the most decisive action of the whole rescue, and yet neither the officer who was assaulted nor any one else was cognizant of it.

I submit, gentlemen, that evidence contradicted as this by all the facts in the case, inherently impossible, and unsupported by a single other witness is not sufficient to satisfy the minds of an intelligent jury.

Surely I may claim with the utmost confidence that there is that rational doubt of its correctness arising upon the

whole facts and circumstances of the case which warrants me in asking you to discard it from your minds.

And thus, gentlemen, I have fully and fairly considered every iota of evidence which the prosecution have offered against the defendant; and I say to you as a lawyer and as a man, that in my judgment, it is wholly insufficient to warrant a verdict against him.

And now, gentlemen, a few remarks in relation to the right and the duty of the jury in prosecutions for offences of such a character as this, and I shall conclude.

It was said by a great British statesman, that "bad laws are the worst sort of tyranny." And it is true. They clothe what is unjust and wrong with the sanction of authority. They array the conscience of a people against itself, by enlisting their conscientious reverence for the law in behalf of what conscience itself condemns. By such a conflict, either the national conscience becomes callous, and the citizen becomes indifferent to the injustice which the law imposes, or the conscience of the people proves stronger than their respect for law, and the result is opposition, violence, tumult and revolution.

There can be, therefore, no greater wrong — no more odious tyranny inflicted upon a people — than to compel them by the force of law — by the power of penalties, fines and imprisonment, to the performance of unjust acts, opposed to their convictions of right.

Now there are but two resources which can be made effective to remove or alleviate the evil which comes from unjust and oppressive legislation. The first lies with the people in their power to effect a repeal or change of such legislation by a change of their rulers or representatives. This remedy is often one which it requires a long period of time to accomplish.

The other lies in the right of trial by jury.

The jury has been for ages the great bulwark of the citizen against the oppressions of power—the great security of his rights and liberties.

To the jury is given the *exclusive* right to decide upon the facts.

It was once held (even in the Courts of the United States) that in *criminal* cases they were judges of the *law* also, and such is still the doctrine in our State Courts; but in the Federal Courts, the judges have denied the right of the jury to judge of the law. But the right to be the judges, and the sole and exclusive judges of the facts, is still theirs,

and theirs with no limit or restraint save that which their own consciences impose.

In their exercise of this duty, they are subject to no control or dictation. They are bound by no man's opinion, not even the judge upon the bench. They take the law from the judge, and his decision on the law is under the rule adopted in this Court, obligatory upon them, but his opinion upon the facts has no such authority. Upon the facts they are the supreme and only judges.

There was a time, and not far back in English history, when juries were under the most arbitrary and tyrannical control of judges. When they were fined and imprisoned for refusing to find verdicts in conformity to the wishes of the Court. But those were ages of tyranny. The noble courage and independence of juries in England proved too strong a barrier to be overcome, and the right of the jury to decide upon all questions of fact has became now the established doctrine of the law in England as well as in this country.

Now, where the law sought to be enforced is dangerous to the liberties of the citizen, or unjust and oppressive in its operation, or where it is of a *political* character, juries have it in their power to alleviate its evils by requiring the proof which shall induce them to convict for the violation of such laws to be of the most explicit, positive and satisfactory description.

Those technical defects and nice objections, which, in ordinary cases would be brushed aside as trifles, may in such prosecutions, rightfully be made availing to the protection of the citizen against oppression.

The jury may rightfully insist upon the utmost completeness of the testimony in every particular. They ought never in such cases to permit themselves to convict, except under a weight and conclusiveness of evidence upon every necessary fact which leaves them no choice, except to violate their consciences and their oaths.

And especially is such the duty of the jury in cases tried in this Court, under this law, where there is no *appeal*, no possible mode of reviewing the errors of the judge, or correcting any mistake or injustice done to the defendant on the trial.

The defendant in this case is wholly without remedy, gentlemen, however great and numerous may be the errors of law, or fact which are committed here. Testimony may be admitted in violation of the well established rules of evi-

dence. Instructions may be given at variance with what is regarded to be law by the most able and learned lawyers, but there is no redress.

Consider for a moment to what consequences this [illegible] lead, unless juries are careful of the rights of defendants in such cases.

Suppose Congress should pass a law punishing any citizen who should *speak* or *write* against slavery, by fine and imprisonment. Such a law seems perhaps almost an absurdity to you, but two centuries have not elapsed since, to speak or write against the government in England, was punishable by fine and imprisonment!

Such a law would unhesitatingly be pronounced by the judge who now sits in this Court, as contrary to that provision of the Constitution of the United States which secures to every citizen the liberty of the press and of speech

But, gentlemen, judges are mortal and we may not always be favored with a judge so eminent for learning, and exalted in character as him who now presides over this Court.

Suppose in his place we were to have a LeCompte—nay, even more than this, a Jeffreys, or a Scroggs. Such a judge might find abundance of plausible pretexts for sustaining the constitutionality of such a law as I have mentioned. He might choose to regard such utterances about slavery, either spoken or printed, as incendiary, and not authorised by that proper and licensed freedom of speech which was intended by the Constitution.

Suppose such a judge should think fit to decide that such a law was constitutional, and a man should be brought to trial under it for uttering the sentiments of Jefferson, or proclaiming the doctrines of the Declaration of Independence. There would be no remedy for such an outrage save in the intelligent judgment and independence of the jury.

In a court, then, from whose decisions there is no appeal, and for whose errors there is no remedy or redress, juries are especially called upon to be careful not to condemn unless the evidence proves the charge beyond the slightest doubt.

Looking at it in this view, it will be impossible for you, as fair men, to convict this defendant upon this indictment, and I cannot think that there is a man on this jury to whom it would not give the greatest satisfaction to be able to bring in a verdict of acquittal.

Surely it can give no pleasure to any man to be the means of imposing a disgrace upon one of his fellow men, of visiting him with fine and imprisonment for an act which is, to say the least of it, dictated by humane and generous motives, and which, if committed, would not lower the defendant in your estimation as a good man. And if not then, it cannot be that on evidence so doubtful and unsatisfactory as has been offered here, you will refuse to acquit him.

Gentlemen of the jury, it is said that the execution o this oppressive and odious law in the North will tend to the preservation of the Union, and your love of country is sought to be enlisted in aid of a conviction of the defendant at the bar.

I deny the assertion. I say that nothing tends more to weaken the bonds of the Union at the North than such prosecutions as these. Make men feel by the execution of this Fugitive Slave Act, on the soil of the free States, how all the great securities of personal liberty are daily violated in behalf of slavery: pursue with fine and imprisonment men of stainless character and unsullied life, for giving a helping hand or a kind word to a poor fugitive on his way to liberty, and you will fill the hearts of free men at the North with feelings of bitterness and discontent. Better, far better were it for the Union, for the peace of the country, for the continuance of those fraternal feelings and relations which should bind together the citizens of these States, if this Fugitive Slave Law of 1850 had lain, like the law of 1793, dormant upon the Statute Book. The law of 1793 was the only law on this subject for more than fifty years. It is well known that that law was practically a nullity, and that so few attempts to enforce it were ever made that it was to all intents and purposes the same as if there were no law in existence, and yet that was the period of the utmost peace and harmony throughout the whole country.

Better, far better if this law of 1850 had shared the same fate. Better for the South itself, for if slavery be that fierce and terrible volcano, ever ready to pour forth fire and destruction over the whole land, as it has been so graphically pictured in the eloquent denunciation of the learned gentleman against abolition incendiarism; then it were surely wiser and safer to let these brave and fiery spirits who have the boldness to strike out for freedom, and the skill and daring to obtain it remain where they are, and not seek to regain them. Such men would, if captured and restored, be but as firebrands to kindle the

flame of insurrection and light the train which should cause the volcano to explode.

Better, too, for the North, for it would remove one bitter and burning source of anger and resentment in the Northern heart.

It is said that the laws of the United States must be enforced. It is better for bad laws to remain unenforced—to sleep in harmless oblivion.

There are other provisions of the Constitution of the United States as binding as that on which this law is based, and which are also in themselves just, which are every day violated; and yet the Government does not take any action in respect to such violations, and the dignity of the Government seems not to be at all disturbed by them.

The property of citizens on the free soil of one of the territories of the United States, has been destroyed by the most wanton violence—men have been assaulted and murdered for no crime, and in the open light of day—one of the great navigable rivers of the nation has been blockaded by armed men—free citizens are daily being exposed to insult and outrage in other States for exercising the right of free speech, and of a free press, guaranteed to them by the Constitution. All these things are matters of public history which are known to all.

Did you ever hear of any persecutions of these men by the Government? Was the law enforced against these violators of the rights of person and property?

Why must this law, which punishes what is not a crime except by the statute which makes it so, be selected, and all the power of the Government be given to its enforcement, while the guarantees of the Constitution against unreasonable seizures and searches and its securities for the great rights of personal liberty, the freedom of speech and of the press, are trampled upon without notice and without punishment?

Gentlemen, I believe from my heart that a verdict of acquittal in this case will do more than aught else to allay public excitement—to quiet the angry feelings and bitter resentment which these prosecutions have engendered.

One victim has already been offered up to this great Moloch of Slavery. The law has been vindicated. It is enough. Let your verdict in this case restore this defendant to his family in peace, and show that while you are willing to do full justice to the slaveholder, you have some respect for he rights and liberties of freemen.